United States Postal Service *and* John Fripp *and* North Jersey Area Local, American Postal Workers Union, AFL-CIO. Cases 22-CA-9616(P), 22-CA-10042(P), and 22-CA-10312(P)[1]

August 13, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND ZIMMERMAN

On July 27, 1981, Administrative Law Judge James F. Morton issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed cross-exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[2] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

MEMBER FANNING, concurring and dissenting:

I agree with my colleagues that Respondent did not violate Section 8(a)(3) or (5) of the Act, and that the case should not be deferred to arbitration. However, the complaint separately alleges, and I would hold, that Respondent violated Section 8(a)(1) of the Act when its supervisors limited employee access to Stewards Wittlinger and Arminio.

Article XVII, section 3, of the contract between the parties provides that stewards may request to interview aggrieved employees during working hours and that such requests shall not be unreasonably denied.

Between 1977 and 1979 the stewards were having problems obtaining releases for handling grievances from their immediate supervisors. Consequently, the parties negotiated a more specific release policy which was set forth in a memorandum dated July 27, 1979. According to the new policy, "the supervisor shall release the steward within one hour of the request under most circumstances, but in no event will a delay beyond two hours be tolerated."

During September 1980, however, Union Stewards Wittlinger and Arminio were told by their immediate supervisors that they were no longer permitted to process grievances during the first 2 hours of their shifts, and that they should limit the time spent on each grievance to 15 minutes. The problem was solved in December 1980 shortly after Respondent's top management was notified about the dispute and directed its supervisors to release the stewards immediately upon request.

Although the supervisors' actions here may have breached the parties' contract and the terms of the July 27 memorandum, I agree with the Administrative Law Judge and concur with my colleagues that Respondent did not, because of these actions, unilaterally change the contract in violation of Section 8(a)(5) of the Act because its top management promptly corrected the problem upon notification of its existence. However, the restrictions placed on the stewards by their immediate supervisors for over 1 month did interfere with the employees' Section 7 right to consult with their stewards concerning grievances, and in these circumstances Respondent must be held responsible for its supervisors' actions. Therefore, I would find that Respondent interfered with its employees' exercise of the rights guaranteed them in Section 7 of the Act and thereby violated Section 8(a)(1).

DECISION

STATEMENT OF THE CASE

JAMES F. MORTON, Administrative Law Judge: On November 20, 1979, John Fripp, a clerk employed at the Newark, New Jersey, post office of the United States Postal Service (herein called Respondent) filed the unfair labor practice charge in Case 22-CA-9616(P) against Respondent; on May 28, 1980, he filed the charge in Case 22-CA-10042(P) against Respondent. On September 30, 1980, the North Jersey Area Local, American Postal Workers Union, AFL-CIO (herein called the Union), filed the unfair labor practice charge in Case 22-CA-10312(P) against Respondent. On January 21, 1981, an order consolidating cases and third amended complaint was issued by the Regional Director for Region 22 of

[1] These cases were formerly consolidated with Cases 22-CA-10315(P) and 22-CA-10489(P), which were severed at the hearing.

[2] Although we agree with the Administrative Law Judge's finding that Respondent did not discipline John Fripp as a pretext for discouraging his union activity, the record does not support the Administrative Law Judge's accounts that: (1) no allegation was made by the General Counsel that the supervisors who made the antiunion warnings were agents of Respondent, and (2) John Fripp testified that he received a written request to turn in his key to the cafeteria door.

the National Labor Relations Board.[1] Respondent filed its answer to that complaint. The hearing was held before me in Newark, New Jersey, on February 17-19 and 26-27, 1981.

The issues are:

(1) Whether Respondent, in violation of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended (herein called the Act), disciplined its employee, John Fripp, because of his activities on behalf of the Union.

(2) Whether the allegation that Respondent violated Section 8(a)(1) and (5) of the Act by unilaterally modifying a policy governing the release of union stewards from work to enable them to process grievances should be dismissed on the ground that the underlying issue may best be resolved by the grievance arbitration procedures contained in the collective-bargaining agreement between Respondent and the Union.

(3) Assuming that the arbitral processes are not to be deferred to, did Respondent, in violation of Section 8(a)(1) and (5) of the Act, unilaterally change the practice of releasing union stewards for grievance matters?

Upon the entire record, including my observation of the demeanor of the witnesses and after careful consideration of the briefs filed by the parties, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

The Board has jurisdiction over this matter by virtue of section 1209 of the Postal Reorganization Act, 39 U.S.C. § 101, *et seq.* (herein called the PRA). The facility involved in this proceeding is the Newark Post Office, located in the city of Newark, New Jersey. Respondent is now and has been at all times material herein an employer within the meaning of the PRA.

II. THE LABOR ORGANIZATION INVOLVED

The Union is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

The employees of Respondent, nationwide, are divided into three collective-bargaining units: (a) letter carriers, (b) truckdrivers, and (c) clerks. The American Postal Workers Union, AFL-CIO (APWU), represents the nationwide unit of clerks; and its North Jersey Local Union, i.e., the Union in the instant case, services the contract between Respondent and APWU, its parent, as it pertains to approximately 3,000 clerks employed at Respondent's postal service center in Newark, New Jersey.

As the testimony in this case discloses, there were more than a few individuals involved in the events discussed below and it will be helpful at the outset to identify most of them. The postmaster at Newark is Joseph Benucci; Respondent's director of employee and labor relations there is Clifford Rowland; and its manager of labor relations at Newark is Melvin Weibush.

The manager of distribution at Newark is Fulvio Stanziale. The individuals who report directly to him are the "administrators" in charge of the respective "tours." The mail sorting at Newark is done on a three-shift basis. Each shift is termed a "tour." Tour I covers the hours 10:30 p.m. to 7 a.m.; the exact hours for tours II and III are not clear and it appears that they may overlap.

The administrator for tour I was Robert Robinson in 1979-80, the time period involved in this case. The tour II administrator then was Michael Rosania.[2] The managerial level immediately under that of tour administrator is that of operations manager. One function for which an operations manager is responsible at Newark is classified as LSM; i.e., letter sorting machines. Reporting to the respective operations managers are the mail supervisors. The specific mail supervisors involved in the instant case included Antonio Agneta, Frances Reavis, Walter Pasterczyk, and Emanuel Bettinger.

The officials of the Union involved in this case are:

1. Its former president, Jules Turturiello.
2. Its current president, John Napurano.
3. Its chief steward and later its executive vice president, James Pawlowicz.
4. Its present chief steward, Frank Arminio.
5. Its tour I-II steward, William Wittlinger.
6. A former steward, John Fripp.

B. *Alleged Discrimination Against Former Steward John Fripp*

1. Background

John Fripp has worked for Respondent since November 1972 as a clerk in its Newark Post Office.

The General Counsel contends that in the latter months of 1979 and in early 1980 Respondent discriminatorily (a) issued five letters of warnings to him, (b) suspended him from work for 7 days, and (c) denied his request for authorization to take leave without pay but instead charged him with being AWOL. The General Counsel acknowledged that several of the allegedly unlawful letters of warning were withdrawn by Respondent's supervisors during the grievance procedure. He indicated at the hearing that a motion would be made to withdraw the allegations pertaining to those adjusted matters but that he would still seek a remedial notice thereon. In his brief, counsel for the General Counsel stated that at the hearing he had "moved to withdraw all disciplinary actions against Fripp that were resolved by the grievance procedure, more specifically the letters of warning dated August 28, September 13 and 18, 1979 issued by supervisor Agneta." It appears that the reference to September 18 should have been to September 28

[1] Other cases had been consolidated with the cases captioned above. At the hearing, I granted a motion by the General Counsel to withdraw all allegations in the third amended complaint which pertained to those other cases. In effect then, those other cases have been severed and I have approved the motion to withdraw the related complaint allegations involved in those cases, together with the underlying unfair labor practice charges.

[2] The name of the tour III administrator is not in the record in this case.

as Fripp was issued no letter of warning by Agneta dated September 18. The General Counsel urged later in his brief that Agneta's testimony should not be credited as to his account respecting the September 28 letter he issued to Fripp; the General Counsel also submitted as a separate point of argument in his brief that the August 28 and September 13 and 28 letters, and other letters to Fripp constituted violations of Section 8(a)(1) and (3) and the General Counsel specifically requested that Respondent be ordered to remove all such warnings from Fripp's personnel file.

Respondent, in its brief, observed that the General Counsel "amended the complaint to withdraw the allegations" respecting the August 28 and September 13 and 28 letters by Agneta and that the General Counsel had introduced evidence respecting those letters solely for purposes of "background." Further, I note that the General Counsel offered evidence that Fripp was given notice on October 1, 1979, of a 7-day suspension (later reduced to 3 days) for purposes of "background"; there is no allegation that that notice or the 3-day suspension was violative of the Act.

To avoid confusion, I will examine and decide upon the merits of all issues raised including the August 28 and September 13 and 28 letters of warnings given to Fripp by Agneta and also of the October 1 letter and the resultant 3-day suspension imposed on Fripp. In that way, each of these matters can be considered for purposes of background, or as separate violations of the Act, or to fashion any remedial notice that may be warranted.

2. Fripp's protected activities

Fripp had been a union steward from January 1977 to February 1980. One of his coworkers, Philip Dempsey, testified that he, Dempsey, edited a newsletter, entitled "The Newark Postal Worker" from May to November 1979 and that he, together with other employees including Fripp and the Union's chief steward, Frank Arminio, distributed copies of that newsletter to clerks in the Newark post office in that 6-month period. The purpose of the newsletter, as set out in its headline, was to keep the Union's general membership informed as to "changes in their workplace." Altogether, 11 editions of the newsletter were published; the last in the latter part of November 1979. The articles therein were critical of various matters involving clerks at Newark, e.g., the abolishment of unit positions; heat conditions; alleged failures to improve facilities in locations where unit employees work; light-duty assignments for allegedly favored employees; and an assertedly new release program for union stewards. Dempsey testified that, in June 1979, he had been told that Respondent's manager of distribution, Stanziale, was upset at comments made in the newsletters edited by Dempsey.[3]

There were assertions made in those newsletters that Respondent appeared to have retaliated against individuals because they were selected as union stewards. There is, however, no allegation in the complaint in this case that any steward, other than Fripp, was discriminated against by Respondent. There is no contention, either, that Dempsey was treated unfairly because of his role as editor of the newsletters referred to above. The newspaper also contained articles asserting that certain employees, including Fripp, were being treated in a disparate and an adverse manner and it questioned whether such treatment was related to their union activities.

Dempsey also testified that his supervisor, Richard Novaks, told him in September 1979 that Postmaster Benucci was extremely upset over "paper number 5 [published in September 1979] and that management may take appropriate action." Two items appeared in that issue. One article asked whether it was true that, at the Newark post office, "workmen (bestow their favors on their bosses) for preferential treatment"; the article then answers by stating that "this practice stretches from the work floor to the offices of higher management level." A second item in that edition refers to a supervisor who sold jewelry and asked if he were selling it during working time.[4]

3. The August 28 letter of warning

Fripp testified that, in accordance with usual procedures, he asked his supervisor, Antonio Agneta, on August 27, 1979, for permission to leave his work area in order to meet with Chief Steward Arminio to take care of some union business and that Agneta granted his request. His testimony indicates that later that day Agneta reviewed with him the matters set out at length in the August 28 letter, discussed below, but the particulars of that meeting are not set out in the record.

Agneta testified for Respondent that he had released Fripp to meet with the Union's chief steward, Arminio, on August 27 and that sometime later he was unable to find Fripp on the first floor of the facility, presumably the floor on which both Fripp and Arminio were assigned to work. Agneta testified that he later located them in the basement and that they told him that it had been past practice for them to use that area. Agneta testified that he "disputed" this and that he issued Fripp the August 28 letter of warning to let him know that he should not use such a remote area from Fripp's regular work location.

The August 28 letter spells out in detail the contentions of Supervisor Agneta respecting the foregoing matter and to a related matter—Fripp's 25-minute delay in reporting to a particular area to handle a grievance, after Agneta had released him on August 27 to go to that area.

Arminio testified that he was released on August 27 by his supervisor to meet with Fripp. His testimony indi-

[3] There is no evidence that the individual who told Dempsey of Stanziale's reaction to the newsletters was an agent of Respondent. Nor is there any contention that a related warning conveyed to Dempsey by that individual then (to the effect that he, Dempsey, and the other clerks who were helping him had better watch their steps) constituted a separate violation of the Act.

[4] The General Counsel adduced testimony that a supervisor was later disciplined for selling jewelry during working time and that that supervisor informed the editor of the newsletter that he "can play the same game." I am unable to see the significance of that testimony in relation to the issues in this case.

cates that there had been discussions between the Union and Respondent as to the specific areas to be used by union representatives to conduct union business and I infer from his general testimony thereon that Respondent had been endeavoring to persuade the union stewards to use specific areas during working time whereas the union stewards wanted to be free to choose where they met. Arminio did not receive a letter of warning from his supervisor respecting his use of the "remote" area with Fripp.

Fripp filed a grievance to protest the issuance of the August 28 letter. The first-step level of the grievance-arbitration procedures requires a meeting with the supervisor. At the first-step meeting, Supervisor Agneta conceded that Fripp had not been specifically instructed previously not to use that "remote" area. Agneta testified also that Fripp clearly understood then that he would be given specific release times and locations and that he would honor those. Based on those considerations, Agneta testified he then rescinded the August 28 letter of warning.

It is the General Counsel's contention that Fripp was issued the August 28 letter of warning because he was then a union steward and because of his activities in distributing the newsletters edited by Dempsey. There is no evidence that he was more active as a steward than any of the other union stewards or, for that matter, than the Union's chief steward, Arminio. There is no evidence to link the August 28 letter to the newsletters which had been distributed since May 1979. The fact that Respondent took no action against Dempsey or Arminio indicates that it harbored no union *animus* toward them. I can see no reason why the General Counsel would urge that Respondent singled out a much lesser figure, Fripp, than they. Further, the evidence fails to establish that the reasons given by Agneta for issuing the August 28 letter of warning were pretextual—Fripp was in a remote area and apparently was otherwise missing for a 25-minute period during the workday in question. Finally, I note that Agneta's actions do not appear to have been calculated to undermine the support for the Union among the clerks at Newark. On the one hand he issued a letter of warning to a union steward and that may by itself raise an issue respecting unlawful motivation. On the other hand, the fact that Agneta rescinded the warning at the first-grievance step strongly indicates lack of merit respecting that issue and suggests instead that the Union had been an effective instrument in getting warning letters rescinded promptly.

In view of the limited scope of Fripp's protected activities, the absence of direct, probative evidence of union animus,[5] the fact that more active supporters for the Union were not disciplined, the lack of a showing that the reasons proffered by Respondent for giving him the warning were pretextual,[6] and the ambivalent nature of the asserted discriminatory act itself, I conclude that the evidence is insufficient to establish that the August 28 letter was issued for discriminatory reasons.[7]

4. The September 13 letter of warning to Fripp

Agneta issued a second letter of warning to Fripp, dated September 13, 1979. It recited that, on September 7, Fripp failed to report back to his work area after having concluded a grievance interview and instead had "began to research the . . . grievance" without authorization. The warning letter also cited Fripp for having reported back to work 25 minutes later from a grievance meeting on September 12 and it noted that Fripp's excuse, bathroom emergency, was unacceptable for so long a period.

Fripp testified that he does not recall the September 7 incident and that, on September 12, he stopped briefly in the bathroom on his way back from a grievance meeting before returning promptly to his assigned work area. Fripp stated that Agneta was not in that area when he returned.

Agneta testified respecting the matters set out in the September 13 letters. His account parallels the recital contained in it. He further testified that he rescinded the warning at the first step of the grievance procedures as he conceded it was possible, in view of the size of his work area, that he had failed to notice Fripp's return at the time Fripp claimed he did come back to his assigned workplace.

For essentially the same reasons that the earlier warning letter was found to be not a violation, I find that the September 13 letter was not issued for discriminatory purposes. There appears to have been at least a genuine fact issue. Further, the General Counsel adduced no evidence to establish that the September 7 incident recounted by Agneta was in any way used as a pretext.

5. The first September 28 letter

The next allegedly unlawful letter of warning to Fripp is dated September 28, 1979, and it also was rescinded by Agneta at the first grievance step. That letter states that Fripp punched his timecard in to work 2 minutes late on

[5] In his brief, the General Counsel refers to testimony that individuals with various titles, i.e., General Supervisor Ray De Furia, Supervisor Richard Novaks, and Supervisor Paul Galli, conveyed antiunion warnings at different times. None of those matters was alleged to be violative of the Act; none of the individuals who assertedly made those statements was alleged to be agents of Respondent.

[6] The General Counsel comments in his brief that Agneta had known for months prior to August 28, 1979, that Fripp and Arminio had used a room in the basement to conduct union business and he observes that this disclosed that Fripp was being held to a more stringent standard than was normally followed. I am not sure if the General Counsel is addressing the matter as to whether Respondent's reason for warning Fripp was a pretext or the matter of alleged disparate treatment or both such matters. In any event, the evidence in the record indicates clearly that Agneta was aware that the Union had not been assigned a specific location in which to conduct its business during working time and that he knew that the union officials used a room in the basement. The record does not, however, clearly show, as the General Counsel asserts, that Agneta readily knew on August 27 that Fripp and Arminio were using the room in the basement during all the time Agneta claimed to be looking for Fripp.

[7] *Bechtel Incorporated*, 248 NLRB 1222 (1980). Alternatively, I note that, were there merit in the General Counsel's contention that the August 28 letter was violative of the Act, I would not provide any specific remedy therefor as the clear import of the General Counsel's remarks at the hearing was that testimony thereon was submitted as background only in view of the fact that that warning had been rescinded. The fact that the General Counsel did not make a formal motion to withdraw that allegation does not change the obvious intent of his remarks; i.e., to remove that matter as a litigable issue.

September 25 and that Fripp was simply standing at the timeclock without making an effort then to go to work. Fripp contended that he was then engaged in explaining to a group of new employees the procedures to be followed in punching in for work. Fripp testified that there was a great deal of confusion on that day because those new employees had not received proper instructions. Agneta denied that there was any such problem and he asserted simply that Fripp for no reason delayed punching in to work. Respondent's administrator for that tour, Michael Rosinia, had observed Fripp and directed Agneta to issue the letter of warning to Fripp. I credit Fripp's account as it is fairly detailed and as Agneta later conceded that there was confusion that morning among a group of new employees when they sought to punch in and as Agneta acknowledged that then he, Agneta, was too busy to recall the events of that day.

The September 28 letter also recounts that Fripp had on September 25 failed to display his ID card as required. Fripp testified that while he did not display his ID card in the manner specified in the letter, he nonetheless had worn it in a manner by which it was always visible.

The credited evidence is insufficient to establish that the September 28 letter was issued for discriminatory reasons. The matters involved therein (the late time period and the variation in the manner in which Fripp displayed his ID card) were actual events, not prefabrications. There appear to have been genuine issues as to the merits of the respective contentions and they were resolved by a rescinding of that warning letter at the first-grievance step. The fact that the grievance had merit does not thereby render the warning to Union Steward Fripp unlawful.

6. The second September 28 letter

Fripp was issued another letter of warning on September 28. That was given him by Acting Supervisor Frances Reavis because he went to the first floor when released to handle a grievance in an area located on the second floor.

Fripp testified that he told her that he had to go to the first floor and then to the second floor to conduct union business and that she responded that, if he had to go to the first floor, he should come back to get a separate release to conduct union business on the second floor. Fripp testified he then told her he had to go to the first floor only to get certain forms from the Union's locker there and that he would then use those forms in conducting the union business he had on the second floor.

Supervisor Reavis testified that she had told Fripp that he was authorized to go to a specific area and that, if he wanted authorization to go to another floor, he should return and request separate authorization. She testified that she issued the letter of warning as Fripp failed to comply with her instructions. I credit her account and note that Fripp does not deny that he was so specifically instructed by her. His testimony suggests only that Reavis implicitly consented to permit him to go to the first floor to pick up certain forms. Overall, the evidence fails to establish that Respondent's reason for issuing the September 28 letter of warning was a clear pretext. I find that the evidence is insufficient to support a finding that Reavis' letter of September 28 to Fripp was violative of the Act.

7. The October 1 letter

Fripp was issued a letter of warning on October 1, 1979, by his supervisor for that day, Fred Sylvers.[8] The letter recites that it was based on Fripp's having made an unauthorized trip to the first floor when he had been released to go only to his locker located on the second floor.

Fripp testified that he was authorized by Sylvers to go to "the locker" to get certain grievance forms, that he went first to his own locker on the second floor and found none there, and that he then had to go to the Union's locker on the first floor to obtain the forms he needed. Respondent's contention is that Fripp regularly wandered from his assigned work area and that warnings were issued to him to induce him to follow specific release instructions in an effort to enable it to account for his working time. The evidence presented to me by the General Counsel falls short of establishing that the reason proffered by Respondent for issuing the October 1 letter of warning to Fripp was clearly a pretext. At best, such evidence may show that Supervisor Sylvers misconstrued the import of Fripp's request for permission to go to "the locker" as a reference to his locker, rather than to both that locker and also to the Union's locker on the first floor. Such a contention relates only to whether Respondent had "just cause" to issue the letter of warning. In any event, I find the evidence insufficient to establish that Respondent issued the October 1 letter of warning to discourage Fripp from pursuing his duties as a union steward or as retaliation for his having helped distribute the newsletter referred to above.

8. The notice of suspension and the suspension itself

The General Counsel offered evidence respecting a notice issued to Fripp on October 1, 1979, informing him that he would be suspended for 7 days beginning October 4. Respondent objected to any testimony thereon as the complaint did not allege that that notice or the subsequent suspension (which was later reduced, during a grievance discussion, from 7 to 3 days) was violative of the Act. Nevertheless, the General Counsel stated that the testimony thereon should be received as "background to show the totality of the conduct" displayed by Respondent toward Fripp. On that premise, testimony was received. The October 1 notice of suspension recites that Fripp was instructed in writing on September 19 not to unlock the door between the cafeteria and mezzanine at the Newark post office and that he nevertheless used a key to unlock that door on September 28 to enter the cafeteria.

Fripp testified that he was asked in writing on September 19 to turn in his key to that door and that he told his supervisor then that he had no key to that door. He testi-

[8] Fripp was supervised then by Sylvers for 2 of his 5 workdays; Acting Supervisor Reavis was his supervisor for the remaining 3 workdays.

fied further that, on September 28, he observed that that door was not completely closed and he then pushed it to enter the cafeteria. He and the General Counsel assert that the door was also not "locked." The General Counsel contends that the statement in the October 1 notice of suspension that he used that door "in direct disregard of official instructions" was false as (a) Fripp used no key to open the door, and (b) Fripp had not been told that he could not use that door.

Respondent adduced evidence that the door was always locked and that it was not "slightly ajar" at the time Fripp used it. It appears too that there was a door closer above that door to insure that it would close completely.

I am unable from the above evidence to infer any improper motivation in Respondent's issuance of the notice of suspension. Even if Fripp's account were credited, it is still fair to say that he knew or should have known that he was not to use the door in question and that, despite that knowledge, he used it. Obviously, the reason he was asked to turn in his key was to insure that he could not use it to open that door. Again, his opening the door from a position where it was all but locked would warrant an inference by Respondent that he had used a key to open the door. The evidence fails to establish that Respondent acted on the basis of a clear pretext. Consequently, I infer no union *animus* from the issuance of the October 1 notice of suspension. As there is no allegation that the notice or the suspension violates the Act, I make no express determination thereon.

9. The November 7 notice of suspension and the resultant suspension

The complaint does allege that a notice given Fripp on November 7, 1979, of a 14-day suspension, effective beginning November 13, violated Section 8(a)(1) and (3) of the Act. That suspension was later reduced to 7 days. According to the notice, Fripp (a) failed to follow instructions by wearing a radio headset while working on November 6, and (b) was absent without authorization from the work floor at intervals on October 26 and 31 and November 1, respectively.

Fripp testified that he used a headset and that other employees did. The inference was that Respondent treated him in a clearly disparate manner. Respondent's witnesses testified that other employees did, in fact, wear headsets while working; their testimony, however, discloses that those employees had either been specifically authorized to do so or even required to do so. These other employees operated noisy letter sorting machines and apparently the headsets they wore protected their hearing. The use of a headset by Fripp, on the other hand, could be a hazard under certain circumstances.

Respecting the alleged unauthorized absence of Fripp from his work area on October 27, Fripp testified that he obtained authorization to handle a grievance with a supervisor in another section, Walter Pasterczyk, and went to that section. While there, according to Fripp, it became apparent that he needed certain forms and he excused himself to go to another area where the forms were kept. He then filled out those forms and returned to present those forms to Supervisor Pasterczyk, who asked him where he had been. Fripp testified that he explained to Pasterczyk that he was filling out the forms and that Pasterczyk told him that Fripp returned too late and that he, Pasterczyk, could not handle the matter then. Fripp testified that he then reported back to his work area where his own supervisor told him that Pasterczyk had been looking for him. It appears that Pasterczyk had been looking for Fripp for about 45 minutes.

Pasterczyk's account does not differ extensively from Fripp's. His testimony indicates he expected Fripp to return momentarily to resume discussing the matter under consideration but that, when Fripp did not come back, he began a search. According to Pasterczyk, he observed Fripp about 45 minutes later in another area of the building. When Fripp saw him Pasterczyk testified, Fripp tried to hand him, Pasterczyk, some forms but Pasterczyk refused to accept them and told him that he, Fripp, was supposed to have returned promptly as he had employees waiting there in order to process the grievance being discussed.

As to the October 31 incident, Respondent's records show that Fripp finished processing a grievance with a supervisor named Hutmaker at 2:15 p.m. that day but did not return to his own work area until 2:45 p.m. Fripp testified that he spent that 30-minute interval reviewing data furnished him by Hutmaker and that he then had occasion to discuss another matter with Supervisor Pasterczyk for about 5 to 7 minutes before returning to work. There is no evidence that he had been released by his supervisor to meet with Pasterczyk. Pasterczyk testified that Fripp spoke with him that day for a minute or two in order to obtain a written extension of time to process a grievance and to ask Pasterczyk to arrange for him to speak to some individuals apparently involved in that grievance matter.

The last incident referred to in the November 7 suspension notice occurred on November 1 and pertained to the fact that Respondent's records disclose that Fripp finished processing a grievance that day with Supervisor Hutmaker at 8:35 a.m. but did not report back to his work area until 9 a.m. Fripp testified that an emergency matter had developed after he finished talking with Hutmaker and that he had to take care of it. It appears that some employees in another section were complaining loudly about being required to work overtime and that Fripp went to that section to discuss that matter with their supervisor. Respondent's suspension notice states that Fripp had not procured the requisite authorization to be absent from his own work station during the interval he discussed that overtime problem.

Fripp filed a grievance protecting the November 7 notice of suspension. As a result of the grievance discussions thereon, the 14-day suspension was reduced to 7 days.

The General Counsel observes that "[a]ll of the above incidents involve extremely minor incidents which did not warrant substantial discipline." From this, the General Counsel further argues that the application of more stringent rules against a steward is violative of the Act. I do not accept that reasoning process. The first proposition put forth by the General Counsel appears to con-

cede that Respondent could properly have disciplined Fripp in some manner as long as it was not "substantial." For all I know, a 7-day suspension for the asserted infractions may be insubstantial under the labor relations history between Respondent and the Union. More significantly, there is no evidence of disparate treatment. For substantially the same reasons given before for the allegations that Respondent had otherwise discriminatorily issued warnings to Fripp, I conclude that the evidence fails to demonstrate that the November 7 notice was issued to Fripp or the resultant 7-day suspension was imposed on him because of his activities as a union steward or for his other union activities.

10. The AWOL notice

The last allegation of discrimination against Fripp is based on the denial by Respondent of his request to treat December 28, 1979, as a day on which he was on leave without pay (LWOP) and on its, instead, having marked him as AWOL for that day. Fripp testified that he called the timekeeper at 6:45 a.m. on December 28, to advise that he would not be in for his shift starting at 7 a.m. and that he would be out all day on union business. He testified that he learned about a week later that Respondent did not grant him LWOP for December 28 when his supervisor, Frances Reavis, told him that he had not obtained "documentation" that he was in fact engaged in union business that day. Fripp testified that he told her that the procedure she followed was not correct, that Reavis never expressly asked him to furnish "documentation" and that, if she had done so, he would have been able to furnish it.[9]

Reavis testified that she told Fripp that she could not approve his request for LWOP without his first supplying "verification." One of the General Counsel's witnesses testified that Respondent has followed no set pattern in requiring employees to submit written verification to justify LWOP requests. It appears that, on some occasions, such verification is sought and on others it is not. The "verification" if asked and if it pertained to union affairs consists of a simple affirmation by a union officer that the individual in question was absent due to official union business. I am unable to conclude that Respondent discriminatorily denied Fripp's request for LWOP on December 28 as, at best from the General Counsel's standpoint, the evidence is ambiguous as to whether Fripp was reasonably expected to, and failed to, proffer a letter from the Union's president to support his request. There seems to be no question but that, had he done so, his request for LWOP would have been honored. There is no allegation that his being requested to furnish "authentication" was itself a discriminatory condition and, in fact, the evidence suggested that such an allegation would clearly be meritless as the act required was virtually ministerial in nature and consistent with established practice, both for requests pertaining to LWOP for union business and for other reasons.

The procedural defense raised by Fripp to the determination by Respondent that he was AWOL—that he was not *expressly* asked to furnish "authentication" that he was on official union business on December 28—may or may not be adequate in deciding whether Respondent acted in accordance with established procedures in treating Fripp as AWOL. The assertion of that procedural defense, however, is insufficient to convert the AWOL determination into an unfair labor practice. There is simply no persuasive evidence that Respondent's reason for treating Fripp as AWOL on December 28 is a pretext—especially as the Union had never, prior to the hearing, notified Respondent that Fripp was entitled to LWOP on the ground that he was engaged in official union business on the day in question. At the hearing, the Union's president acknowledged that he would be willing to document that Fripp was at the union's office on union business that day. That may well have been sufficient and still may be. For my purposes, however, the evidence is insufficient to establish, as alleged in the complaint, that Respondent unlawfully failed in January 1980 to grant Fripp LWOP for December 28 as there is no showing that its actions were motivated by discriminatory considerations.

11. The allegations in aggregate

In examining the overall testimony respecting the alleged discriminatory acts against Fripp, I note that he helped distribute newsletters prepared by another union official, that others also helped in distributing those letters, and that Fripp was one of the Union's stewards at the Newark post office. There were several statements by Respondent's supervisors that the individuals distributing the newsletters were viewed by Respondent's managers as being engaged in questionable practices. Some of the news items were in fact questionable, insofar as they may or may not have been protected by the Act. I also note that evidence of discrimination cannot be inferred from the events on which the letters of warnings and other alleged acts of discrimination were based. In making the preceding observation, I further note that the General Counsel has failed to demonstrate that the bases relied on by Respondent for issuing those letters of warnings and the suspensions and its refusal to honor Fripp's request for LWOP were clearly pretextual. Thus, I conclude that the General Counsel has failed to demonstrate that Respondent violated Section 8(a)(1) and (3) in the various aspects of discipline it meted out to Fripp.

C. *Alleged Unlawful Unilateral Change in the Practice of Releasing Union Stewards From Work To Process Grievances*

The complaint, as amended at the hearing, alleges that Respondent, in violation of Section 8(a)(1) and (5) of the Act, restricted its clerks at the Newark post office from having access, on September 24, 1980, and in October 1980, to Union Shop Stewards William Wittlinger and

[9] I have substantial doubts that that documentation was so readily available to Fripp. He testified he was at the union office all day. Another employee testified that he and Fripp were there to discuss certain matters with John Napurano, then the Union's executive vice president. Napurano testified that he saw Fripp at the union office on December 28 and that he supposed that Fripp was there to meet with the Union's president, Jules Turturiello. Napurano did not testify that he had any business with Fripp then. Turturiello also testified for the General Counsel but did not refer to any union business he had with Fripp on December 28.

Frank Arminio. Respondent contends first that the policy, upon which such access is predicated is based on an agreement between Respondent and the Union, and thus the resolution of any question thereon must be processed under the related grievance-arbitration provisions of the contract between Respondent and the Union. With respect to the merits of the allegation itself, Respondent asserts that there has been no substantial change in the release policy.

Respondent has recognized the American Postal Workers Union, AFL–CIO, as the exclusive bargaining representative for all its employees employed in the clerk craft, including employees so employed at its Newark facility. The Union in the instant case, i.e., North Jersey Area Local of APWU, AFL–CIO, polices the national agreement at Newark and has negotiated with the Newark postmaster a local supplement. As noted earlier, there are about 3,000 employees in the clerk craft in Newark.

Article XVII, section 3, of the national contract, spells out the general policy regarding the release of union stewards during working time to process grievances and provides:

> Section 3. Rights of Stewards. When it is necessary for a steward to leave his work area to investigate and adjust grievances, he shall request permission from his immediate supervisor and such request shall not be unreasonably denied. In the event his duties require he leave his work area and enter another area within the installation or post office, he must also receive permission from the supervisor from the other area he wishes to enter and such request shall not be unreasonably denied.
>
> The steward or chief steward may request and shall obtain access through the appropriate supervisor to review the documents, files and other records necessary for processing a grievance, and shall have the right to interview the aggrieved employee, supervisors, and witnesses during working hours. Such requests shall not be unreasonably denied.
>
> While serving as a steward or chief steward, an employee may not be involuntarily transferred to another shift or to another facility unless there is no job for which he is qualified on his shift or in his facility, provided that this paragraph shall not apply to rural carriers.

The General Counsel's witnesses testified that, beginning in 1977, stewards in Newark began to experience difficulties in obtaining permission from their immediate supervisors to be released from work to handle grievance matters. The Union's president then, Jules Turturiello, observed in the course of his testimony that "supervisors being human . . . sometimes . . . get a little uptight with the work problem(s) and (their) attitude . . ." is not good from a labor-management relations standpoint. By early 1979, the problem had escalated to the point where Turturiello instructed his stewards to document each instance where a request to be released was denied. When he had compiled reports of about 50 such instances. Turturiello filed an unfair labor practice charge against Respondent. The Newark postmaster, Joseph Benucci, called him and asked why he had done that. Turturiello explained to him that the Union's efforts to get cooperation from immediate management personnel had proved futile. Benucci and Turturiello considered the matter further and they reached an agreement which was designed to spell out precisely the applicable guidelines to be followed by the parties in implementing at Newark, article XVII, section 3. The terms of that agreement were set out in a memorandum by Benucci dated July 27, 1979, and were addressed to all supervisors at the Newark facility. Based on that agreement, Turturiello withdrew the unfair labor practice charge he had filed. From then and until his term ended around February 1980, the Union experienced but one or two minor problems concerning the release of stewards and those problems were quickly resolved. The July 1979 memorandum by Benucci to supervising personnel at Newark which sets out the release policy at Newark states:

> It has come to my attention that Union stewards are not being released from duty to attend to grievance matters. This is a matter of utmost concern to me and it must not continue.
>
> Effective immediately, when a steward requests to be released from duty, the supervisor shall release the steward within one-hour of the request under most circumstances, but in no event will a delay beyond two-hours be tolerated. In all such requests the steward will be informed immediately as to the time when he/she will be released.
>
> On no occasion is the steward to be given a release time near the end of the steward's tour, unless the steward makes a specific request for a late tour release time.
>
> Upon receiving the steward's request, the supervisor must immediately make arrangements with the supervisor of any unit which the steward must visit. The supervisor of a unit to be visited must arrange to accommodate the steward within one-hour in most circumstances.
>
> The same time limits (one-hour in most cases, no more than two-hours) will be observed when an employee informs a supervisor that the employee desires to see a steward. Supervisors will confirm to employees, as soon as possible, that the steward has been notified and the approximate time the steward will be available.
>
> It is required that stewards be badged in-and-out (600 series), and be issued Forms 7020 each time the steward is released.
>
> This policy shall be administered by the Operations Analyst on each tour. Any problems that may occur will be resolved by the Operations Analyst in cooperation with the North Jersey Area Local's office (in Clifton) for Tour II, the Chief Steward for Tour III, and the Director of the Craft for Tour I.

> All concerned will be held accountable for the successful implementation of this policy. It is incumbent upon all of us to realize that the stewards have a right to, and *must* represent the employees. We must extend ourselves to provide their exercise of this right. Any supervisor who does not abide by this policy will be subject to, at the least, severe rebuke.
>
> I have been promised the cooperation of the Union. I look forward to your earnest efforts to insure continued Labor-Management cooperation.

In February 1980, the Union elected a new president, John Napurano. He had been its executive vice president. Its then chief steward, James Pawlowicz, was elected executive vice president. One of the night stewards, William Wittlinger, took over a major part of Pawlowicz' former duties. The Union was unsuccessful in inducing any of the unit employees to volunteer to assist Wittlinger as a night steward. As a consequence, Wittlinger had to take care of the grievances of about 1,000 employees and sometimes as much as 1,500. Prior to the election of union officers in February 1980, Wittlinger, as a union steward, took care of only about 100 employees. Wittlinger also has been employed at Newark as a registry clerk. That position demands experience in the procedures involved in recording and processing registered mail and related matters. At that time, late February 1980, no one was trained to replace Wittlinger as registry clerk. Whenever Wittlinger was released from work as chief steward to process a grievance, there was no one to substitute for him as registry clerk. It soon became apparent that Wittlinger's additional duties as steward were taking up the major part of his working hours and that had an obvious impact upon his ability to handle his regular position as registry clerk. His supervisor, obviously in an effort to keep the registry desk current, began to restrict him from having access to employees during working hours to process grievances. Wittlinger insisted he needed much more free time from his regular work duties to handle the rapidly accumulating grievances and, feeling himself under great pressure, he absented himself from work until April 1980. At that point, the Union's president discussed the problem with Respondent's postmaster at Newark. Benucci then agreed that Wittlinger would be granted administrative leave for the weeks that Wittlinger was absent and Benucci arranged that two clerks would be trained as registry clerks to backup and substitute for Wittlinger whenever his union duties required it. For the next 5 months, Wittlinger was able to handle grievances for about 4 to 6 hours each shift.

His supervisor, Emanuel Bettinger, testified that, in late September 1980, he (Bettinger) was experiencing many problems with respect to handling the registry area. He noted for example that, on the first hour of a tour, he spent a great deal of time trying to get experienced clerks from other units reassigned to his area to fill in as needed and in making other adjustments so that his section could function adequately each day. Bettinger testified also that he was finding it very difficult during the first hour or two of a tour to get his unit set up properly as other supervisors during those first 2 hours were too busy on other matters to meet with Wittlinger on grievances or to make employees under them available to meet with Wittlinger for grievance discussions. Bettinger observed that many of the other supervisors were also engaged then in trying to get their respective teams "set up for the whole tour." It was at that point, according to Bettinger, that he approached the administrator of his tour and proposed that, for the first hour or two of the tour, Wittlinger should not be permitted to leave his area. Bettinger testified that the tour administrator agreed to that proposal. Bettinger also informed Wittlinger that he should limit his time on each grievance to 15 minutes. At or about this same time, the Union's chief steward, Arminio, was also restricted in his efforts to be released from working time during the first part of the tour.

Respondent contends that those limitations are consistent with the provisions of the national contract and with the provisions of Benucci's memorandum in July 1979 as those provisions contemplate that a steward must be released no later than 1 or 2 hours after a request is made.[10] That contention, however, is not supported by the ensuing events. When Postmaster Benucci was apprised of the problems that the Union's chief steward was experiencing in late 1980, he sent his director of labor relations, Clifford Rowland, to take care of the matter. As the General Counsel conceded in his brief, Respondent's director of labor relations at Newark notified the Union that employees would be trained immediately to substitute for Wittlinger. Respondent had also offered to transfer Wittlinger to a less-demanding job so that he would be better able to handle labor relations matters but Wittlinger declined the offer as he preferred the registry clerk position. Also, the Union continued to experience difficulty in recruiting and retaining stewards. Rowland met with first supervisors and with intermediate management personnel in early November and told them that, when a steward requests release time, he is to be released in the time it takes to snap a finger. Rowland made it very clear to them that Benucci wanted strict adherence to that instruction. There was no evidence presented of any specific problem experienced by the Union since then as to its stewards being released to handle grievance matters or of employees being unable to meet promptly with their stewards on grievance matters.

Respondent urges as a procedural defense that the allegation that Respondent unilaterally restricted the access of union stewards to employees should be dismissed on the ground that that contention can best be pursued via the grievance-arbitration channels of the parties' collective-bargaining agreement. That contention misstates the issue. As I grasp the contention of the General Counsel, Respondent is alleged to have, from late September to

[10] Respondent also introduced voluminous records which disclosed that Wittlinger and other stewards spend a great deal of their working time handling grievances. I attach no great significance to that material as the other evidence indicates that restrictions were imposed on the stewards and as other evidence indicates that they were adversely affected thereby with respect to their abilities to handle grievances.

mid-November 1980, resumed its efforts to change the long-established policy under which stewards are to be released immediately, upon request, except in the most exceptional circumstances. The General Counsel is seeking to have the Board write *finis* to such continued efforts and is not alleging that Respondent adopted a temporary modification of a contractual provision which would be susceptible to the grievance-arbitration procedures for appropriate clarification and interpretation. In these circumstances, and noting that allegations of wrongdoing which bear directly on a union's ability to use the very grievance procedures themselves are matters that go the core of labor-management relations, I find that it would not be appropriate to defer the issues in the case to the arbitral process.[11] I thus reject Respondent's first defense and now consider the merits of the unfair labor practice issue.

The testimony demonstrates clearly that Respondent and the Union have for many years followed a practice whereby a union steward has been routinely released promptly on request to handle a grievance and that, on occasion or for brief intervals, first-line supervisors and intermediate managers have delayed the release of stewards in order to give preference to the manpower needs of their respective units. On one occasion, i.e., in early 1980, the underlying problem was traceable primarily to the Union's inability to furnish enough stewards. Nevertheless, the established release policy was recognized by the Union's president and by Postmaster Benucci as controlling. When the problem surfaced again in the fall of 1980, it was decisively resolved by the unequivocal orders issued by the Newark postmaster. While I thus reject Respondent's contention at the hearing that the actions of its first-line supervisor and of its middle management personnel were at all times consistent with the established policy governing release of stewards, I do not thereby suggest that the General Counsel has met his burden of proving the violation alleged. On the contrary, the evidence is clear to me that he has failed in this regard. As noted above, the basic allegation is that Respondent has repeatedly changed the established release practice and that the modifications put into effect for a couple of months in late 1980 constituted its last unlawful act to that effect. To find merit in that contention, it would be necessary for me to ignore the unequivocal actions of Respondent's principal official at Newark in dealing with the matter. Briefly put, I put significant weight on the actions of the Newark postmaster, in contrast to the acts of some of those under him and which were done at irregular intervals.[12] In substance, I conclude that the General Counsel has failed to establish that Respondent made any substantive change in its release policy at Newark but has shown only sporadic efforts on the part of some intermediate supervisory personnel to do so and that those efforts were promptly negated by the unequivocal acts of the Newark postmaster.

[11] Cf. *Native Textiles*, 246 NLRB 228 (1979); *Westinghouse Electric Corporation*, 243 NLRB 306 (1979).

[12] I do not agree with Respondent that the actions of Supervisor Bettinger and others were consistent with Benucci's directive or with its other assertion that that directive did not contain binding release procedures. Clearly Benucci and the Union were defining reasonable release procedures insofar as Newark is concerned and these provide simply that stewards are to be released immediately on request unless extraordinary circumstances exist and, in such an event, stewards must be released in 1 hour, or, at most, 2.

D. *Post-Hearing Motions*

After the parties filed post-hearing briefs, the General Counsel filed with me a motion to reopen the record to receive additional evidence and a separate motion to correct transcript errors. The latter motion is granted; the former, however, is denied for the reasons discussed below.

Some background is needed to consider the merits of the General Counsel's motion to reopen the record. When this case first opened, five cases had been consolidated for hearing—the three decided above which involved incidents at the post office in Newark, New Jersey, and two other cases which involved allegations of unlawful conduct at one of Respondent's facilities, located in Jersey City, New Jersey. At the first day of the hearing, counsel for the General Counsel moved to withdraw from the complaint the allegations pertaining to the Jersey City location. In particular, the General Counsel had moved to withdraw all allegations in Case 22-CA-10315 and, in connection with that motion, noted that the charging party in that case, Jeffrey Perry, had refused to cooperate.

The second case which involved the Jersey City location had been based as an unfair labor practice charge filed by an individual, Marvin Hodges, in Case 22-CA-10489(P); the relevant complaint allegations thereon were that Respondent, at its Jersey City facility, had unlawfully refused on October 22, 1980, to allow Hodges to meet with Union Steward Joseph Eiche and that Respondent thereafter had limited Eiche, at its Jersey City location, with respect to the time he could spend in processing grievances for Hodges. The General Counsel moved to withdraw those allegations on the ground that Respondent and the Union had satisfactorily adjusted that matter between them.

The motions to withdraw the allegation pertaining to the matters affecting the Jersey City facility were granted and those cases were thereby effectively severed from the three cases decided herein.

The General Counsel had now moved to reopen the record. In that regard, the memorandum in support of the motion recites that a complaint had been issued on May 12, 1981, in Case 22-CA-107281(P) based on a charge filed by Joseph Eiche and that that complaint alleged that Respondent violated Section 8(a)(1), (3), and (4) of the Act "by issuing letters to Eiche; filing an incident report about Eiche; notifying Eiche of a suspension; denying Eiche's request for leave of absence; advising Eiche that he would not be paid for emergency leaves of absence; notifying certain of its employees that the times of their daily breaks and lunches would be changed; altering said employees' daily lunch and break periods; advising Eiche in writing that he had punched out from work early and that his pay would be reduced accordingly; and notifying Eiche that he would again be suspended." I note also that the third amended complaint which issued in the instant case had contained allegations

that the Jersey City facility was managed by individuals different than those who managed the Newark post office.

Respondent was afforded the opportunity to state its position respecting the General Counsel's motion to reopen the record. It had timely filed a memorandum in opposition to the motion to reopen the record and therein asserts that the General Counsel has set forth no facts to demonstrate that a reopening would avoid unnecessary costs and delay. Respondent further asserts that the General Counsel's real purpose is to prejudice me and ultimately the Board by accusing Respondent of "enough violations."

I have carefully considered the arguments made *pro* and *con* the motion to reopen. While some of the factual allegations in the newly issued complaint in Case 22-CA-10728(P) are similar to some of the allegations in the instant case, I note that the allegations in Case 22-CA-10728(P) raise issues under Section 8(a)(3) and (4) of the Act and the somewhat similar allegations in the instant case relate to Section 8(a)(5). Further, the General Counsel does not assert that the charging party in Case 22-CA-10728(P) had any contact with the Newark post office and I also note that the officials of Respondent at its Jersey City location are different from those officials who are responsible for the Newark post office. The Board has held that it is not appropriate to consolidate cases involving different units of employees and factual backgrounds and where the complaint allegations vary.[13] The Board has also held that it is not appropriate to reopen a hearing to take evidence on collateral issues when such a procedure would unduly delay the issuance of a decision.[14] For the same reasons set forth in those cases, I shall deny the General Counsel's motion to reopen the hearing in the instant case.

[13] *The Dow Chemical Company, Texas Division*, 250 NLRB 748 (1980).
[14] *Barnard and Burke, Inc., Construction Division*, 221 NLRB 55 (1975).

CONCLUSIONS OF LAW

1. Respondent is an employer over whom the Board has jurisdiction.
2. The Union is a labor organization as defined in the Act.
3. Respondent did not unlawfully discriminate against its employee John Fripp based on his activities in support of the Union or for other concerted activities protected under the Act and thus did not violate Section 8(a)(1) and (3) of the Act.
4. Respondent did not unilaterally change the policy governing the release of union stewards from work to handle grievances and thus did not violate Section 8(a)(1) and (5) of the Act.
5. It will not effectuate the purposes of the Act to reopen the record in this case to take testimony pertaining to matters alleged as separate violations of the Act in the complaint issued on May 22, 1981, in Case 22-CA-10728(P).

Upon the foregoing findings of fact and conclusions of law, I hereby issue the following recommended:

ORDER[15]

The complaint, as amended, is dismissed and the General Counsel's motion to reopen the record is denied.

[15] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.